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Director - Regulatory Affairs



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January 12, 2001

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Ex Parte: Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket No. 99-217; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98

Dear Ms. Salas,

On January 10, 2001, BellSouth and Verizon provided joint comments to the Real Access Alliance on its model Telecommunications License Agreement for Multi-Tenant Office Buildings previously submitted in this proceeding. BellSouth and Verizon hope these comments will be helpful in fashioning a form of Telecommunications License Agreement that ILECs could use and are willing to work with the Real Access Alliance to develop an acceptable model license agreement. A copy of the joint comments is attached and copies have been provided to the staff of the Wireless Telecommunications Bureau.

Pursuant to Section 1.1206(a)(1) of the Commission's rules, and original and one copy of this letter are being submitted to the Office of the Secretary. Please associate this notification with the record in the proceedings indicated above.

If you have any questions regarding this matter, please call me at (202) 463-5293.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. Scott Randolph", written in a cursive style.

W. Scott Randolph
Director - Regulatory Matters

cc: Jim Schlichting
Jeffrey Steinberg
Leon Jackler
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January 10, 2001

Nelson F. Migdal, Esq.
Holland & Knight
2100 Pennsylvania Avenue, NW
Washington, DC 20037

Re: Real Access Alliance Model Telecommunications License Agreement

Dear Mr. Migdal:

Verizon and BellSouth have reviewed the model Telecommunications License Agreement (Multi-Tenant Office Buildings) that was posted on December 13, 2000 on the Real Access Alliance website, and this letter is our response to the request for comments.

As you may know, Verizon and BellSouth are committed to open access to buildings, but have not been proponents for additional laws or regulations mandating access to multi-tenanted buildings. Verizon and BellSouth have no objection, in concept, to a model Telecommunications License Agreement. However, the form of Telecommunications License Agreement proposed by the Real Access Alliance, while very nicely drafted for situations involving a relatively new Competitive Local Exchange Carrier (CLEC) or a thinly capitalized telecommunications company, would create new problems in dealings between landlords and Incumbent Local Exchange Carriers (ILECs), particularly the former Regional Bell Operating Companies. This is because the one-size-fits-all form of Telecommunications License Agreement proposed by the Real Access Alliance:

- Is drafted in the context of a commercial lease, whereas the relationship between building owners and ILECs is not a landlord-tenant relationship.
- Does not take into consideration existing telecommunications laws and regulations that have an impact on in-building wiring, such as regional differences regarding the location of the demarcation point and federal requirements regarding unbundled network elements.
- Does not take into consideration many of the telecommunications tariffs that apply to ILEC operations and in-building wiring.
- Does not adequately address situations in which a telecommunications company is heavily regulated.

It is in this context that Verizon and BellSouth offer the attached comments on the model Telecommunications License Agreement for Multi-Tenant Office Buildings. We hope these comments will be helpful in fashioning a form of Telecommunications License Agreement that ILECs could use. We would be pleased to work with the Real Access Alliance to develop an acceptable model license agreement and can provide you with a specific example of a license agreement that would be responsive to the regulations, tariffs and procedures under which Verizon and BellSouth operate.

Sincerely,

Encl.

cc: Roger Platt, Real Access Alliance
Richard D. Eckhard, Holland & Knight
Gerard Lavery Lederer, BOMA
Theodore Kingsley, BellSouth

Comments of Verizon and BellSouth on Real Access Alliance Model
Telecommunications License Agreement for Multi-Tenant Office Buildings

General Comments

1. General Comment: The model Telecommunications License Agreement for Multi-Tenant Office Buildings ("License") is drafted in the context of a commercial lease, whereas the relationship between landlords and an ILEC such as Verizon or BellSouth is not a landlord-tenant relationship. Verizon and BellSouth are not renting space in the landlord's building, nor are they like a typical vendor under a service contract. Telecommunications carriers and landlords each serve the same customers - the tenants in the building - and if they each do their respective job effectively they provide value to the other. If either the landlord or the telecommunications carrier fail to provide good service to tenants, then neither the telecommunications carrier nor the landlord may achieve their full business potential.
2. General Comment: The License proposed by the Real Access Alliance contains terms and conditions that could have the effect of excluding some carriers. The building access policies of BellSouth and Verizon are non-exclusionary.
3. General Comment: Existing telecommunications laws and regulations already have an impact on in-building wiring. For example, in many jurisdictions ILECs maintain their demarcation point near the edge of each tenants' premises. In these buildings, the ILEC owns, repairs and depreciates the telecommunications cable, wiring and equipment within the building's equipment rooms and riser systems. Such telecommunications infrastructure differs from the building's other central systems (such as plumbing or electrical systems) because the landlord does not have to purchase, finance or maintain it. In addition, relatively new federal requirements regarding unbundled network elements require an ILEC like Verizon or BellSouth to share their spare in-building wiring with CLECs, reducing the need for other companies to overbuild the building's existing telecommunications infrastructure.
4. General Comment: Existing telecommunications tariffs apply to ILEC operations and in-building wiring. For example, most regulatory bodies allow common carriers to enact tariffs that limit their liability for negligence, such as a negligent cable cut. This allows the telecommunications carrier to maintain lower rates to the public and advances public policy. The broad indemnities required under the proposed License would conflict with this limitation of liability.
5. General Comment: The License appears to be aimed at relatively new or thinly capitalized CLECs and does not adequately address situations in which a telecommunications company is heavily regulated and adequately capitalized. For example, the insurance requirements in the License are similar to those commonly required of tenants or general contractors, but are unnecessary for telecommunications companies that are adequately capitalized and may, in fact, be

self-insured. Also, the requirement in the License that the telecommunications company send a detailed written notice to the landlord in advance of any service call would be unworkable for companies like BellSouth and Verizon that dispatch hundreds of technicians each day by means of an automated dispatch system.

6. BellSouth and Verizon support the concept of freely negotiated, private agreements between telecommunications service providers and landlords, that comply with all state and federal laws relating to competitive building access. However, BellSouth and Verizon would oppose any attempt to establish a federal rule compelling the use of one particular contract form (such as the Real Access Alliance draft Model Telecommunications License Agreement) in all situations.

Specific Comments on Transaction-Specific Terms and Conditions

Sections 1.6, 1.8 and 1.15 (Initial Term and Extension Term): Commercial leases always have specific terms, usually a number of years. This real estate concept, however, does not easily translate to ILEC operations within buildings. The nearest equivalent to the termination of a lease, in the context of a telecommunications license with an ILEC, is to move the demarcation point to the building's minimum point of entry (MPOE). For example, Verizon's form of license agreement generally allows the landlord to require the demarcation point to be moved to MPOE after the first five years of the license, at the option of the landlord, so long as the landlord pays Verizon's then net book cost of the infrastructure and the cost of re-terminating the demarcation point. This deals with the concept of termination of an ILEC's rights within the building in the context of telecommunications laws and regulations rather than inapplicable commercial leasing principles, and also protects the ILEC from a stranded investment.

Sections 1.9, 1.10 and 1.12 (License Fees and Payments): Verizon and BellSouth do not pay rent or license fees for the right to serve tenants in office buildings. Their tariffs in each state generally provide that their obligation to serve tenants in a building is contingent upon obtaining access from the building owner and/or the tenants. While a CLEC, which can pick and choose the buildings it serves, might decide to pay a landlord for access, an ILEC like Verizon or BellSouth, which is the "provider of last resort" and serves many thousands of buildings, cannot establish a precedent of paying landlords for access to commercial office buildings. Also, Verizon and BellSouth do not support what would amount to a transfer payment from the ILECs to the real estate industry with no value added to the end-user customer.

Section 1.11 (Default Rate): This provision is inapplicable.

Section 1.14 (Due Diligence Period): While a CLEC may be able to look at a building and decide not to serve it, an ILEC, as "provider of last resort", does not have that luxury. Therefore, this provision is inapplicable. If the landlord provides the ILEC with suitable access, the ILEC will provide the service.

Specific Comments on General Terms and Conditions

Section 2 (License Grant)

Section 2(a): The ILECs cannot be expected to know of covenants, conditions and restrictions recorded against the building. Also, we do not understand why the License grants an exclusive right to use the rooftop of the building. Neither Verizon nor BellSouth require landlords to grant them exclusive access to buildings.

Section 2(c): Verizon's and BellSouth's tariffs and policies generally allow a landlord to request them to relocate their infrastructure, if the landlord pays for the cost of relocation (including the cost of labor - much of this work would be performed by Verizon or BellSouth employees and not by third parties). However, if the cables being relocated contain active circuits, the tenants in the building may not be pleased by this landlord requirement because of the possible disruption of service to those tenants.

Section 2(d): As stated in Paragraph 5 of the General Comments above, a requirement that Verizon or BellSouth notify the landlord several days in advance before performing a repair in the building is unworkable. Verizon and BellSouth dispatch hundreds of repair technicians each day by means of an automated system. As a practical matter, their technicians must comply with reasonable access or security requirements of the building's on-site management, if any. However, Verizon and BellSouth are willing to agree to notify a landlord before starting any substantial construction activity in the building. Construction work is usually accomplished in cooperation with building management, whereas a repair is usually dispatched at the request of a tenant/customer.

Section 2(e): While Verizon and BellSouth generally work in buildings in their "as is" condition (another commercial lease concept), there are certain limited exceptions. For example, if asbestos or other dangerous conditions are present in the work environment, Verizon or BellSouth may require the landlord to correct the conditions so that there is a safe working environment. Also, Verizon and BellSouth tariffs may require the tenant/customer or the landlord to provide the necessary electricity, adequate ventilation and, where necessary, adequate heat and air conditioning, in the telecommunications equipment room. However, Verizon and BellSouth generally do not expect landlords to be liable to them for interruptions in electrical service or HVAC.

Section 2(h): The restrictions on co-location and interconnection may frustrate efforts by regulatory bodies to allow CLECs to cross-connect to ILEC riser facilities and avoid the necessity of overbuilding existing riser facilities.

Section 3 (Use)

Section 3(b): This section contains provisions which might appear to make sense from a real estate prospective, but as written would be unacceptable to many ILECs. Unfortunately, there may be occasions where some interference occurs. However, most landlords recognize that ILECs are generally not a problem in this regard. To the extent a

problem does occur, ILECs are unlikely to agree to create a private right of action in favor of landlords, even if the problem is caused by the ILEC's negligence (see Paragraph 4 of the General Comments above).

Section 3(d): It is difficult to envision an emergency that would necessitate shutting down telephone service, and we note that emergency situations often require the use of a telephone. Neither Verizon nor BellSouth would be willing to give a landlord the right to shut down a portion of their network, even if the landlord believed an emergency existed.

Section 3(e): The sound, if any, emanating from an ILEC's equipment in buildings is negligible, and this section is not relevant. This is a commercial lease concept that does not apply to an ILEC's in-building cable, wiring and equipment.

Section 4 (Service to Tenants): Section 4(a), which provides that the telecommunications companies serving the building shall enter into service agreements with tenants/customers on terms reasonably acceptable to landlords, is wholly inapplicable to an ILEC. Verizon sells its services to millions of customers pursuant to tariffs and regulatory requirements. In some cases, very large or sophisticated customers may order special services pursuant to negotiated contracts or limited service offerings, but those customers/tenants are usually large enough to fend for themselves without the help of the landlord. Tariffs are filed with state utility commissions and/or the FCC and the terms of the tariffs must be acceptable to those regulatory bodies. Neither Verizon nor BellSouth would want landlords (or the Real Access Alliance) to dictate the terms of those tariffs or any limited service offerings any more than landlords would want an ILEC to dictate the terms of the leases between landlords and their tenants.

Section 5 (Financial and Technical Capacity): There is little point in asking financial and technical capacity questions of an ILEC that has been in business for decades. Please note that financial information on ILECs is often available from the applicable regulatory bodies and many of the ILECs also have rated debt. Given the desirability of ILECs as real estate tenants, their financial capacity should not be an issue.

Section 6 (Compliance with Law)

Section 6(a): Verizon and BellSouth are certainly willing to agree to comply with all applicable laws and obtain all necessary permits for their operations in buildings. However, they cannot agree to comply with all of the landlord's rules and regulations for a building, since many typical building rules and regulations require payments to landlords (for example, payments for the use of the building's freight elevator) or impose other requirements (such as the use of a landlord's approved contractor) that an ILEC may be unable to agree to. The building rules and regulations may also impose special notice requirements that an ILEC would be unable to comply with. However, the resolution of this issue is entirely practical. Service technicians usually have no way of knowing in advance a building's rules and regulations, but upon arriving at a building they will often be told of the building rules by the building's on-site management, and if the rules are reasonable under the circumstances, they are generally not a problem. If the

service technician is unreasonable, then the on-site management may refuse access to the building.

Section 6(b): These detailed requirements regarding the building's rooftop are inapplicable to an ILEC and appeared to be aimed at CLECs having wireless networks that make extensive use of rooftops.

Section 7 (Construction): This section contains two pages of detailed provisions pursuant to which the landlord controls every aspect of the construction of in-building telecommunications facilities in much the same way that the landlord would control a tenant's buildout of its office space. Many of these provisions are unnecessary and some of them attempt to place construction obligations on the telecommunications company that Verizon and BellSouth would not accept. Verizon's and BellSouth's view of the construction process is much simpler - they can agree to obtain the landlord's consent before constructing their facilities in the building, and will work with the landlord during the construction process, just as their operating telephone companies have done for decades. This process can be described in a couple of short paragraphs. Some of the work items in the License that Verizon and BellSouth would not be in a position to agree to include providing plans and specifications for repair work, providing core drilling or in-building conduit, working only during overtime hours at the request of the landlord, labeling each circuit, allowing the landlord to specify the labor (or labor unions) to be used by Verizon and BellSouth, and giving the landlord approval rights over the quality of the telecommunications work performed by Verizon and BellSouth.

Section 8 (Maintenance Obligations): This section contains maintenance obligations that are largely irrelevant to the operations of an ILEC in a building.

Section 9 (Access): Most of the provisions after Section 9(a) impose special notification and reporting requirements that an ILEC such as BellSouth or Verizon would be unable to agree to. For example, they would not be in a position to give a landlord a written report detailing their repair work in the building.

Section 10 (Removal of Equipment Upon Termination): This section goes into great detail regarding the removal of the telecommunication company's equipment following termination of the agreement. If the landlord terminated the agreement (by requiring the relocation of the demarcation point to the building's MPOE), Verizon and BellSouth would expect to recover their stranded investment. Verizon and BellSouth would agree to remove their electronic equipment in the building and repair any damage caused by such removal. Also, the reference to "Licensee's Connecting Equipment" was confusing.

Section 11 (Cable Distribution System): The idea of a central telecommunications cable distribution system ("CDS") in the building, installed and owned by a landlord, may sound appealing to landlords until they realize precisely what that means. A move of the ILEC's riser facilities to a landlord-owned riser system could be expensive and complicated. In addition, there is no justification for requiring an ILEC to pay landlords for the use of riser facilities. Also, the idea of migrating to a landlord-owned riser may

not work for service at DS-3 and above, where many sophisticated tenants/customers want Verizon and BellSouth to provide an uninterrupted fiber loop or SONET ring directly to the equipment on the premises.

Section 12 (Insurance, Release and Indemnity): This section contains detailed insurance requirements similar to those imposed on tenants under commercial leases. Verizon and BellSouth would be willing to provide limited indemnification of the landlord for damage to persons or property, and such an indemnity would provide a landlord with adequate protection. However, the proposed indemnity in this section of the License would be inconsistent with the limitation of liability afforded under the ILEC's tariffs and therefore is unacceptably broad.

Section 14 (Subordination to Mortgages): Subordination to mortgages, deeds of trust and ground leases is a common provision in commercial leases. It is inapplicable in a License with an ILEC for several reasons. First, unlike every other central system of a building that is owned by a landlord and financed by a mortgage lender, the ILEC's in-building cable, wiring and equipment is owned, repaired and depreciated by the ILEC and regulated by the appropriate federal and state regulatory bodies. Also, virtually no ILEC in-building wiring is subject to a subordination agreement, but that has not hindered any financings or mortgage foreclosures – the last thing on the mind of a foreclosing lender is the elimination of an ILEC's telephone service to the building. This would appear to be an issue in search of a problem.

Section 15 (Estoppel Certificates): Estoppel certificates are a commercial lease concept and are inapplicable in a telecommunications license. The relevant question for third parties is not whether a telecommunications license exists, but whether telephone service exists or can be obtained.

Section 16 (Events of Default): Default clauses appear in almost all commercial leases, but this is a real estate concept that does not translate well in an agreement between a landlord and an ILEC like Verizon or BellSouth, for several reasons. First, Verizon's and BellSouth's service standards are usually imposed or monitored by state utility commissions, and this provision would create hundreds of mini-commissions by giving landlords the right to control service delivery in a manner that could be inconsistent with regulatory requirements. Second, Verizon and BellSouth are willing to give landlords the right to terminate the license at any time within a few years after they install their in-building facilities, as long as they are not left with a stranded investment. Third, because Verizon and BellSouth are regulated utilities, if service quality is unacceptable, tenants/customers can file complaints with utility commissions, and the utility commissions are rather good at demanding explanations for unacceptable service as well as a plan for improving it.

Section 17 (Utilities): Verizon's and BellSouth's tariffs generally provide that the landlord and/or the customer will supply the necessary electrical power. Since Verizon and BellSouth furnish the power for their dialtone, their power requirements in buildings are usually fairly small. To the extent that a very large building may contain a significant

amount of electronic telecommunications equipment, many landlords are able to distribute the cost of such power to their tenants as a building operating expense.

Section 22 (Assignment): The restrictions on assignment contained in this section are similar to those found in commercial leases. Verizon and BellSouth would only transfer the telecommunications license agreement for a building in connection with a merger or acquisition or a sale of their business region-wide, but in such rare instances they would need flexibility without any special notice or balance sheet requirements. It would simply be impossible to comply with rigid assignment conditions for every building in their service areas.

Section 25 (Hazardous Materials): The hazardous materials provision is similar to those found in commercial leases. In the experience of BellSouth and Verizon, when hazardous materials are present in a building they are usually there because they were placed there by the landlord or tenant (for example, friable asbestos in a work area). In such an event, BellSouth or Verizon technicians would stop work until the landlord or tenant provided a safe work environment. Accordingly, reciprocal environmental indemnities would be appropriate.

Section 27 (Rules and Regulations): Verizon and BellSouth may not be able to agree to all of a landlord's rules and regulations, particularly if they impose additional costs on the ILEC.

Section 34 (Force Majeure): Neither Verizon nor BellSouth would agree to a time limit on force majeure events. For example, they cannot know in advance whether there will be a work stoppage or how long it will last after a labor contract expires.

Section 38 (Confidentiality): Verizon and BellSouth generally see no need for confidentiality language in their telecommunications license agreements.

Section 39 (REIT Representations and Warranties): The reference to an Exhibit L, if the telecommunications company is a real estate investment trust, is inapplicable to licenses with ILECs.

Exhibit F (Specified Telecommunications Services): BellSouth and Verizon cannot agree to the attempt in Exhibit F to limit the provision of their service in the building to certain specified services. If a tenant/customer calls a Verizon or BellSouth business office to order a particular tariffed telecommunications service, and if that service can be delivered over the in-building facilities, they must provide the service. There is no way for a Verizon or BellSouth business office to know that a particular license agreement for a particular building limits the services that Verizon or BellSouth can furnish to their customers in the building. For example, if a tenant with standard telephone service orders ISDN service from BellSouth or Verizon, and if BellSouth or Verizon is able to provide that service under its existing facilities and tariffs in the area, then the service will be provided. Neither Verizon nor BellSouth can sign license agreements that would require them to first obtain the landlord's consent for the new service.

Definitions and Exhibits: The end of the License contains various definitions and exhibits that should either be deleted or modified in accordance with the comments set forth above.